

No. 82-1095

Office: Supreme Court, U.S.
FILED

MAY 23 1983

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

R. PULLEY, Warden of the California
State Prison at San Quentin,

Petitioner,

v.

ROBERT ALTON HARRIS,

Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
NINTH CIRCUIT

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED DEC. 29, 1982
CERTIORARI GRANTED MARCH 21, 1983

JOINT APPENDIX

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CHRONOLOGICAL LIST OF
RELEVANT DOCKET ENTRIES

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

People v. Robert Alton Harris, et al.
CR No. 44135

Date	Proceedings
8/3/78	Information filed charging Robert Alton Harris with, inter alia, two counts of murder, two counts of robbery and two counts of kidnapping.
3/6/79	Judgment of death entered.

SUPREME COURT OF THE STATE OF CALIFORNIA

People v. Robert Alton Harris
Crim No. 20888

2/11/81	Judgment affirmed on direct automatic appeal. (<u>People v. Harris</u> (1981) 28 Cal.3d 935.)
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SUPREME COURT OF THE UNITED STATES

Robert Alton Harris v. California
No. 80-6702

10/5/81 Petition for writ of cer-
 tiorari to the California
 Supreme Court denied.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO
HC No. 5841

11/24/81 Petition for writ of
 habeas corpus denied.

COURT OF APPEAL OF THE STATE
OF CALIFORNIA, FOURTH APPELLATE
DISTRICT, DIVISION ONE

In re Robert Alton Harris
4 Crim 13691

11/25/81 Petition for writ of
 haeas corpus denied.

SUPREME COURT OF THE STATE OF CALIFORNIA

In re Robert Alton Harris
Crim No 22380

1/13/82 Petition for writ of
 habeas corpus denied.

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF CALIFORNIA

Robert Alton Harris v. R. Pulley, Warden
Civil No. 82-0249-E

3/5/82 Petition for writ of
 habeas corpus filed.

3/11/82 Answer to petition filed
 by R. Pulley, Warden.

3/12/82 Hearing held in U.S.
 District Court on issues
 raised in petition.
 Petition denied on merits,
 and dismissed. Certificate
 of probable cause issued
 by U.S. District Court.
 Notice of appeal filed.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Robert Alton Harris v. R. Pulley, Warden
No. CA 82-5246

3/12/82 Telephonic hearing in
 United States Court of
 Appeal for the Ninth

Circuit. Stay of execution granted. Expedited appeal ordered.

5/11/82

Oral argument held in United States Court of Appeal for the Ninth Circuit, San Francisco.

SUPREME COURT OF THE UNITED STATES

Robert Alton Harris v. California
No. 81-6512

6/7/82

Petition for writ of certiorari to the California Supreme Court denied.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Robert Alton Harris v. R. Pulley, Warden
No. CA 82-5246

9/16/82

Opinion of United States Court of Appeals for the Ninth Circuit issued.
(Harris v. Pulley (9th Cir. 1982) 692 F.2d 1189).)

11/15/82 Petitions for rehearing
denied, opinion modified,
stay of mandate to
12/30/82, granted by
United States Court of
Appeals for the Ninth
Circuit.

SUPREME COURT OF THE UNITED STATES

R. Pulley, Warden v. Robert Alton Harris
No. 82-1095

Robert Alton Harris v. R. Pulley, Warden
No. 82-6019

12/29/82 Petition for writ of cer-
tiorari to United States
Court of Appeals for the
Ninth Circuit filed in
Supreme Court of United
States by R. Pulley,
Warden (No. 82-1095).

1/7/83 Cross Petition for writ of
certiorari to United States
Court of Appeals for the

JA-6

Ninth Circuit filed in
Supreme Court of United
States by Robert Alton
Harris (No. 82-6019).

3/21/83

Petition of R. Pulley,
Warden, granted by Supreme
Court of United States
(No. 82-1095). Cross
petition of Robert Alton
Harris denied (No. 82-6019).

EXCERPT FROM REPORTER'S TRANSCRIPT
OF PROCEEDINGS BEFORE THE UNITED
STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF CALIFORNIA
ON MARCH 12, 1982

[Reporter's Transcript at p. 34]

"[BY MR. SEVILLA:]

"I THINK THAT THERE IS SUFFICIENT EVIDENCE FOR AN O.S.C. TO ISSUE BOTH WITH RESPECT TO THE CONTENTIONS RAISED IN THE AFFIDAVITS, WHICH ARE CONTENTIONS OF FACT, WHICH I THINK SHOULD BE RESOLVED I DON'T THINK THE COURT -- OF COURSE, THE COURT HASN'T RECEIVED ALL THE EVIDENCE THAT COULD SUPPORT THOSE CONTENTIONS. IT HAS RECEIVED ALL OF THE EVIDENCE PETITIONER HAS DEEMED NECESSARY TO RAISE A PRIMA FACIE CASE; BUT, AT A HEARING, OF COURSE, HE WOULD SUPPLEMENT THOSE FACTUAL CONTENTIONS WITH ADDITIONAL EVIDENCE.

"IN ADDITION, I DON'T BELIEVE THE COURT HAS HAD LODGED WITH IT--AND I MAY BE MISTAKEN--THE RECORD FROM THE TRIAL COURT PROCEEDINGS.

"THE COURT: I DON'T HAVE THE TRIAL TRANSCRIPT. I HAVE THE VARIOUS BRIEFS."

* * * * *

[Reporter's Transcript at pp. 65-75.]

"THE CLERK: PLEASE REMAIN SEATED AND COME TO ORDER. THIS UNITED STATES DISTRICT COURT IS ONCE AGAIN IN SESSION.

"THE COURT: GOOD MORNING AGAIN, LADIES AND GENTLEMEN.

"FIRST OF ALL, GENTLEMEN, I WANT TO THANK COUNSEL FOR THE MANNER IN WHICH THIS CASE WAS PRESENTED. I HAVE HAD THE RESPONSIBILITY THAT COUNSEL HAVE IN THIS CASE IN THE PAST; AND I REALIZE THAT IT IS A SIGNIFICANT AND AN ENORMOUS

RESPONSIBILITY. I THINK IT WAS VERY WELL EXECUTED BY ALL THE PARTIES TO THE LITIGATION.

"I WOULD JUST LIKE TO JUST GIVE YOU MY THOUGHTS BECAUSE, AS A PRACTICAL MATTER, I DON'T THINK, WITHIN THE TIME FRAME THAT WE ARE DEALING, THAT A COMPREHENSIVE, WRITTEN OPINION CAN BE RENDERED IN THIS CASE; SO I AM GOING TO EXPRESS MY THOUGHTS ABOUT MY REACTION TO THE PETITION AND THE DISCUSSION THIS MORNING.

"AS COUNSEL KNOW, THE PAPERS WERE FILED IN THIS COURT LESS THAN A WEEK AGO. THE ATTORNEY GENERAL TAKES THE POSITION THAT THE EMERGENCY NATURE OF THE PLAINTIFF'S REQUEST HERE IS ENTIRELY OF HIS OWN MAKING IN THAT THE DEATH PENALTY WAS AFFIRMED IN THIS CASE IN FEBRUARY OF 1981; THE SUPREME COURT DENIED THE WRIT OF HABEAS CORPUS IN

JANUARY OF THIS YEAR, MID-JANUARY. THE ATTORNEY GENERAL TAKES THE POSITION THAT TWO MONTHS HAVE GONE BY AND THAT THEY HAVE BEEN COMPELLED TO REPLY IN TWO DAYS. I THINK THERE IS PROBABLY SOME SUBSTANCE IN THE ATTORNEY GENERAL'S CLAIM BECAUSE IT IS A VERY SIGNIFICANT RESPONSIBILITY TO GIVE TO THE COURT IN THE LIMITED TIME FRAME GIVEN THE EXECUTION IS SET FOR TUESDAY OF NEXT WEEK.

"IN ANY EVENT, SINCE THE FILING OF THESE PAPERS, I HAVE REVIEWED THE PETITION TOGETHER WITH ALL OF ITS EXHIBITS; I HAVE REVIEWED THE RESPONSE ON THE MERITS, WHICH I HAVE REQUESTED OF THE ATTORNEY GENERAL; EXAMINED THE BRIEFS AND AUTHORITIES CITED BY PARTIES. I HAVE GIVEN THE ISSUES THAT HAVE BEEN PRESENTED CONSCIENTIOUS THOUGHT AND CONSIDERATION; AND I HAVE ALSO CONSIDERED THE ANALYSES THAT HAVE BEEN GIVEN TO

THOSE SELF SAME ISSUES, BY AND LARGE, BY OTHER REVIEWING COURTS.

"I HAVE IN MIND A REVIEW OF PEOPLE V. HARRIS, 28 CAL.3D; PEOPLE V. FRIERSON, 25 CAL.3D; PEOPLE V. JACKSON, 28 CAL.3D; AND, OF COURSE, GREGG V. GEORGIA AND THE FURMAN CASE, AMONG OTHERS.

"I THINK THE HISTORY OF THIS CASE IS WORTH NOTING. THE HOMICIDES HERE OCCURRED JULY 5, 1978. THE PETITIONER HAS GONE TO THE SUPREME COURT, I BELIEVE, TWICE PRIOR TO THE TRIAL OF HIS CASE, WHICH COMMENCED IN NOVEMBER OF 1978. THE DEATH PENALTY WAS AFFIRMED OVER A YEAR AGO. THE UNITED STATES SUPREME COURT HAS DENIED A HEARING IN THIS CASE. THE PETITIONER HAS PROCEEDED BY WAY OF WRIT OF HABEAS CORPUS THROUGH THE STATE SYSTEM--THROUGH THE SUPERIOR COURT AND THE DISTRICT COURT OF APPEALS,

AND THE CALIFORNIA SUPREME COURT HAS DENIED THE WRIT; SO HE HAS BEEN BEFORE THE HIGHEST COURT IN CALIFORNIA ON SEVERAL OCCASIONS AND BEFORE THE UNITED STATES SUPREME COURT ON OCCASION.

"I WOULD FIND THAT MOST, IF NOT ALL, OF THE ISSUES THAT HAVE BEEN PRESENTED HERE HAVE BEEN RAISED BEFORE IN THE TRIAL COURT, IN THE INTERMEDIATE APPELLATE COURTS OF CALIFORNIA AND THE SUPREME COURTS OF BOTH CALIFORNIA AND THE UNITED STATES; AND, AS MR. MC CABE POINTS OUT, DEFENDANT'S CLAIMS ON THOSE ISSUES HAVE BEEN REJECTED IN EVERY INSTANCE BY EACH OF THOSE COURTS.

"I CONSIDER THE MOST SIGNIFICANT ISSUES IN THIS CASE TO BE THE CONSTITUTIONALITY OF THE CALIFORNIA DEATH PENALTY STATUTE IN THE ATTACK THAT HAS BEEN MADE HERE AS TO PROPORTIONALITY REVIEW AND THE STANDARD OF PROOF; AND

THEN, THE MOST SERIOUS DEFECTS THAT ARE POINTED OUT TO ME THAT I CONSIDER SIGNIFICANT CONCERN THE TESTIMONY OF DR. GRISWOLD AS TO THE TESTIMONY HE GAVE AT THE TRIAL AND THE NATURE OF HIS TESTIMONY.

"AS I HAVE INDICATED, I THINK, IN THE TIME FRAME THAT WE ARE TALKING OF, IT WOULD BE IMPRACTICABLE TO FILE A WRITTEN MEMORANDUM DECISION. IN THE BEST OF ALL WORLDS, THAT WOULD BE THE APPROPRIATE MECHANISM FOR THE COURT'S DECISION. I HAVE ASKED THE COURT REPORTER TO IMMEDIATELY TRANSCRIBE THESE REMARKS THAT I MAKE SO THAT THEY CAN BE ANNEXED BY EITHER OF THE PARTIES TO ANY APPROPRIATE COURT OF REVIEW AS AT LEAST INDICATING THE DISCUSSION THAT WE HAD THIS MORNING AND THE REASONS THAT ARE MOST PERSUASIVE TO ME IN MY ANALYSIS OF THE MATTER.

"I THINK, ON THOSE ISSUES WHICH I HAVEN'T SPECIFICALLY DELINEATED, I FIND MYSELF IN AGREEMENT WITH THE WRITTEN OPINIONS THAT HAVE BEEN FILED IN THE STATE COURT AS TO THE RESOLUTION OF THOSE ISSUES WHICH HAVE BEEN RESOLVED AGAINST THE PETITIONER. I DON'T THINK THAT THEY RAISE SUBSTANTIAL FEDERAL ISSUES. I DON'T THINK THEY ARE OF CONSTITUTIONAL DIMENSION; AND I WOULD CONCUR IN THE RESOLUTION OF THOSE MATTERS THAT I DON'T SPECIFICALLY DISCUSS THAT HAVE PREVIOUSLY BEEN MADE BY THE TRIAL COURT AND THE APPELLATE COURT IN CALIFORNIA.

"SPECIFICALLY, AS TO THE CONSTITUTIONALITY OF THE CALIFORNIA STATUTE, THE PROPORTIONALITY REVIEW REQUIREMENT, I WOULD FIND, BASED UPON MY READING AND MY ANALYSIS OF THE CASES THAT HAVE BEEN CITED BY BOTH PARTIES, THAT PROPORTIONALITY REVIEW IS NOT REQUIRED. THE

SUPREME COURT HAS NOT MANDATED SUCH A REVIEW. IT IS NOT, IN MY JUDGMENT, A FEDERALLY MANDATED, CONSTITUTIONAL PREROGATIVE TO THE IMPOSITION OF THE DEATH PENALTY. IT IS A CONSIDERATION, AS COUNSEL HAVE DISCUSSED; BUT, I AM SATISFIED THAT BOTH FLORIDA AND TEXAS, WHOSE CASES WERE UPHELD BY THE SUPREME COURT ON THE SAME DAY AS GREGG V. GEORGIA, DO NOT HAVE EXPRESS PROVISIONS FOR PROPORTIONALITY REVIEW. I AM SATISFIED THAT, SINCE THE DECISIONS IN THOSE CASE, 1976, OTHER CASES INVOLVING STATUTE PROVISIONS WHICH DO NOT EXPRESSLY REQUIRE PROPORTIONALITY REVIEW HAVE BEEN DENIED HEARINGS IN THE UNITED STATES SUPREME COURT; AND I AM ALSO IMPRESSED BY JUSTICE RICHARDSON'S ANALYSES IN BOTH THE FRIERSON CASE AND, OF COURSE, THE JACKSON CASE WHERE HE DISCUSSES THAT SPECIFIC ISSUE; AND I AM SATISFIED THAT

I AGREE WITH HIS ANALYSIS AND THAT JUDICIAL PRECEDENCE DOES EXIST IN CALIFORNIA, AS HE CITES THE LYNCH CASE, 8 CAL.3D, FOR SUCH REVIEW.

"IN ANY EVENT, I FIND MYSELF IN AGREEMENT WITH JUSTICE RICHARDSON AND HIS ANALYSES OF THE REQUIREMENT OF PROPORTIONALITY REVIEW; AND I WOULD ADOPT HIS REASONS.

"AS TO THE REASONABLE DOUBT STANDARD WHICH IS ATTACKED HERE, THE REASONABLE DOUBT STANDARD DOES ATTACH TO THE FINDING OF SPECIAL CIRCUMSTANCES WHICH TRIGGER THE PENALTY PHASE OF THE DEATH PENALTY HEREIN MANDATED BY THE STATUTE; AND I WOULD FIND THAT, AS FAR AS I CAN DETERMINE, THE CALIFORNIA STATUTE IS PRETTY MUCH COMPARABLE IN ITS PROVISIONS AS TO THE STATUTE WHICH WAS UPHOLD IN PROFFITT V. FLORIDA, WHICH WAS DECIDED THE SAME DAY AS THE GREGG CASE,

IN THAT THE AGGRAVATION AND THE MITIGATING CIRCUMSTANCES WOULD BE CONSIDERED BY THE TRIER OF FACT; AND, IF THE AGGRAVATING CIRCUMSTANCES OUTWEIGH THE MITIGATING CIRCUMSTANCES, THEN THE PENALTY OF DEATH MAY BE IMPOSED.

"I AGREE WITH THE ATTORNEY GENERAL'S POSITION AND HIS ANALYSIS PERTAINING TO THE REASONABLE DOUBT STANDARD; AND I WOULD SAY THAT CALIFORNIA HAS MANY SAFEGUARDS WHICH ARE NOT INHERENT IN MANY OF THE STATUTES THAT THE UNITED STATES SUPREME COURT HAS UPHELD AS BEING VALID AND PASSING CONSTITUTIONAL MUSTER. I WAS SURPRISED TO READ THAT SOME STATUTES, FOR EXAMPLE, DO NOT REQUIRE AN AUTOMATIC REVIEW BY THE HIGHEST COURT IN THE STATE. OF COURSE, CALIFORNIA, AS I SAY, HAS MANY PROCEDURAL PREREQUISITES TO THE IMPOSITION OF THE DEATH PENALTY

WHICH ARE NOT CONTAINED IN STATUTE WHICH HAVE BEEN APPROVED IN OTHER STATES.

"AS TO THOSE DEFECTS WHICH ARE URGED IN THE TRIAL ITSELF, AS TO DR. GRISWOLD'S TESTIMONY, I HAVE REVIEWED ESTELLE V. SMITH, AND AGAIN, I AGREE WITH THE ATTORNEY GENERAL'S POSITION. MIRANDA WARNINGS WERE GIVEN IN THIS CASE. THEY WERE NOT IN THE ESTELLE CASE. VERY SPECIFICALLY, AS POINTED OUT ON PAGE 33 OF THE PETITION HERE, THIS PETITIONER WAS TOLD, WITH PRECISION, THAT HIS STATEMENTS WOULD BE USED AGAINST HIM IN A COURT OF LAW. I WOULD THINK THAT THAT FULFILLS THE FUNCTION WHICH WOULD PERMIT A TRIER OF FACT HEAR THOSE STATEMENTS.

"I ALSO AGREE WITH THE ATTORNEY GENERAL THAT HARRIS v. NEW YORK WOULD BE APPLICABLE IN ANY EVENT; AND I VIEW IT AS A TRIAL QUESTION AND NOT RISING TO

CONSTITUTIONAL DIMENSIONS; BUT I HAPPEN TO AGREE WITH THE ATTORNEY GENERAL THAT, SINCE MIRANDA WAS GIVEN HERE, AND THE SPECIFIC WARNINGS GIVEN TO MR. HARRIS, THAT THAT STATEMENT SHOULD HAVE BEEN RECEIVED BY THE TRIER OF FACT.

"AS TO DR. GRISWOLD'S TESTIMONY ITSELF, I THINK IT'S APPROPRIATE TESTIMONY AGAIN, UNDER ESTELLE V. SMITH, WHICH CERTAINLY DOES NOT RULE OUT PSYCHIATRIC TESTIMONY IN THIS AREA. I THINK IT WAS GENUINE REBUTTAL TESTIMONY AND IS PROPERLY RECEIVED BY THE TRIER OF FACT AND, AGAIN, NOT OF FEDERAL CONSTITUTIONAL DIMENSIONS.

"I WOULD AGREE WITH THE RESOLUTION OF THAT ISSUE AGAINST THE PETITIONER AS IT HAS BEEN IN EVERY STATE PROCEEDING TO THIS POINT. WHAT I AM SAYING, GENTLEMEN, IS THAT I AM SATISFIED THAT THE CASE HAS BEEN EXAMINED WITH GREAT CARE BY

LEGAL SCHOLARS WHOSE OPINION I RESPECT, BY COURTS OF LAST RESORT IN CALIFORNIA AND THE UNITED STATES, BY JUDGES OF EMINENCE AND OF DIFFERING VIEWS AND PHILOSOPHICAL PERSUASIONS, AND ALL PREVIOUS REQUESTS FOR RELIEF THAT HAVE ESSENTIALLY BEEN SOUGHT HERE HAVE BEEN DENIED. I AM MINDFUL OF JUSTICE REHNQUIST'S VIEW WHICH HE EXPRESSED IN THE DISSENTING OPINION IN COLEMAN V. BALKCOM, B-A-L-K-C-O-M, CONTAINED IN 49 U.S.L.W. 3803, THAT THERE MUST BE AN END TO LITIGATION IN CASES OF THIS TYPE. I THINK THERE MUST BE AN END TO THE LITIGATION AT SOME POINT IN TIME.

"I AM AWARE THAT, EVEN IF I GRANTED A STAY OF SHORT DURATION IN THIS CASE AND THEN RESOLVED THE MATTER AGAINST THE PETITIONER, IF I GRANT ANY STAY, I THINK THAT WOULD HAVE THE EFFECT OF VACATING THE EXECUTION DATE UNDER

CALIFORNIA LAW, AND THAT DATE COULDN'T BE THEN RESET FOR AT LEAST ANOTHER 30 TO 60 DAYS; AND, IN MY MIND, THERE IS NO ASSURANCE THEN THAT, IF I DID GRANT THAT LIMITED RELIEF TO THE PETITIONER HERE, THAT ANOTHER FEDERAL JUDGE, LOOKING DOWN THE ROAD, MAY NOT UNEXPECTEDLY FIND HIMSELF FACED AS I WAS WITH VOLUMINOUS BRIEFS AND PETITIONS TEN DAYS BEFORE A SCHEDULED EXECUTION, WHICH WOULD THEN HAVE TO, OF COURSE, THEN BE RESCHEDULED AND THE WHOLE PROCESS THEN REPEAT ITSELF WITH ALL THE ACCOMPANYING TRAUMA TO ALL THE PARTIES AND ALL THE PERSONS WHO ARE INTERESTED SPECIFICALLY IN THIS LITIGATION.

"SO I HAVE CONCLUDED THAT THE CASE SHOULD BE DECIDED PROMPTLY AND MY CONCLUSIONS STATED; AND I WOULD FIND AND CONCLUDE, BASED UPON MY EXAMINATION OF THIS VOLUMINOUS RECORD, FIRST, THAT THE

EVIDENCE OF GUILT HERE IS OVERWHELMING;
AND, BY THE DEFENDANT'S OWN ADMISSION,
THERE IS ABSOLUTELY NO QUESTION OF GUILT.

"SECONDLY, THAT HE HAD A FULL
AND FAIR TRIAL, TESTED BY EVERY LEGAL
STANDARD OF WHICH I AM AWARE.

"THIRD, THAT HE WAS VERY ABLY
AND EFFECTIVELY REPRESENTED BY A COUNSEL
IN EVERY STAGE OF THESE PROCEEDINGS; AND
BY THAT, I MEAN TRIAL AND EVERY PART OF
THE APPELLATE PROCESS AND INCLUDING THIS
HEARING.

"FOURTH, THAT THIS CASE HAS
FAIRLY AND EXHAUSTIVELY BEEN REVIEWED
BY EVERY LEVEL OF APPELLATE COURT IN A
MINUTE, EXACTING AND COMPREHENSIVE
FASHION.

"FIFTH, THAT, IF THE DEATH
PENALTY IS THE LAW OF THIS LAND AND OF
THIS STATE--AND IT IS AT THIS TIME--THAT
HIS ACTIONS AND HIS CONDUCT AS PROVEN BY

THE COURT RECORD IN THIS CASE INDICATE THAT IT IS AN APPROPRIATE AND A DESERVED PENALTY IN THIS CASE.

"SIX, THAT THE SPECIFIC DEATH PENALTY LAW UNDER WHICH HE WAS CONVICTED AND SENTENCED, PENAL CODE SECTION 190, ET SEQ, IN MY JUDGMENT, PASSES CONSTITUTIONAL MUSTER AS SET OUT IN THE FURMAN/ GREGG SERIES OF CASES; AND THAT THE FINAL JUDGMENT WAS GIVEN AND REACHED ON THE PROCEDURES WHICH ACCORDED THIS PETITIONER, IN MY JUDGMENT, FULL AND COMPLETE DUE PROCESS OF LAW. HE IS ENTITLED TO NO LESS THAN THAT, AND HE OESERVES NO MORE THAN THAT; AND, FINALLY, I THINK THAT THIS CASE HAS FULLY RUN ITS COURSE AND THAT THE JUDGMENT SHOULD BE CARRIED OUT.

"IT'S MY VIEW THAT, THEREFORE, THE PETITIONER HAS NOT STATED THE SUFFICIENT LEGAL GROUNDS FOR RELIEF HE

SEEKS OR SHOWN THAT HE HAS BEEN THE VICTIM OF ANY FEDERAL CONSTITUTIONAL VIOLATION; THEREFORE, I WOULD DENY HIS PETITION FOR WRIT OF HABEAS CORPUS AND DISMISS HIS PETITION. HIS REQUEST FOR STAY OF EXECUTION WOULD BE DENIED. HIS REQUEST FOR ADDITIONAL HEARINGS WOULD BE DENIED. HIS PROBABLE REQUEST WHICH IS NOW MADE FOR THE ISSUANCE OF A CERTIFICATE OF PROBABLE CAUSE IS GRANTED; AND I WOULD DO EVERYTHING I COULD TO PERMIT AN EXPEDITED REVIEW OF THIS DECISION IF THAT BE THE DESIRE OF THE PETITIONER. I WOULD DO ALL THAT I COULD TO ASSIST IN THAT PROMPT REVIEW; BUT I WILL DECLINE TO ISSUE ANY STAY FOR THAT PURPOSE. ANY STAY, ANY STAY OF THE SCHEDULED EXECUTION DATE WOULD HAVE TO COME FROM ANOTHER AUTHORITY RATHER THAN THIS COURT. PETITIONER, I AM SURE, WILL SEEK IT IN THE NINTH CIRCUIT COURT OF APPEALS; AND IT

WILL BE UP TO THAT COURT WHETHER OR NOT SUCH A STAY WOULD BE GRANTED; BUT I WOULD NOT ISSUE A STAY FOR THAT PURPOSE.

"I WANT TO THANK COUNSEL AGAIN FOR THE MANNER IN WHICH THIS CASE WAS PRESENTED. I THINK IT DEALT WITH A VERY SIGNIFICANT ISSUE IN A VERY COMPREHENSIVE AND LAWYER-LIKE FASHION, AND IT WAS VERY PROFESSIONALLY PRESENTED.

"AS I HAVE INDICATED, I HAVE ASKED MRS. KING TO MAKE AVAILABLE TO EITHER COUNSEL AS SOON AS POSSIBLE TRANSCRIPTS OF THESE REMARKS SO IT MAY BE ANNEXED TO THIS PETITION FOR FURTHER RELIEF IN THE APPELLATE COURT FOR THE BENEFIT OF PARTIES AND OF THAT COURT.

"IF THERE IS NOTHING FURTHER, GENTLEMEN, THANK YOU VERY MUCH. I APPRECIATE YOUR PRESENTATION.

"MR. MC CABE: YOUR HONOR, WOULD THE COURT PERMIT THE FILING OF

A NOTICE OF APPEAL IN FORMA PAUPERIS
WITHOUT THE NECESSITY OF THE USUAL
DECLARATION OF THE PETITIONER GIVEN THE
CIRCUMSTANCES?

"THE COURT: YES.

"THANK YOU, GENTLEMEN.

"MR. MC CABE: YOUR HONOR, ONE
FURTHER MATTER: DO I UNDERSTAND THAT
ALL OF THE EXHIBITS WHICH WERE PRESENTED
TO YOU WERE ADMITTED AND ARE PART OF THE
RECORD ON APPEAL?

"THE COURT: YES, SIR, THEY
ARE.

"MR. MC CABE: THANK YOU.
THAT'S ALL.

"THE COURT: ALL RIGHT. THANK
YOU, GENTLEMEN."

NOTE REGARDING OPINION OF THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

The opinion and judgment of the United States Court of Appeal for the Ninth Circuit (Harris v. Pulley (9th Cir. 1982) 692 F.2d 1189) is contained in the appendix to the petition for writ of certiorari at pages A-1 to A-72.

AFFIDAVIT OF SERVICE BY MAIL

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110 West "A" Street, Ste 700
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No. 82-1095

R. PULLEY,
Petitioner,
v.

ROBERT ALTON HARRIS,
Respondent.

I, the undersigned, say: I am a citizen of the United States, over 18 years of age, employed in the County of San Diego, in which county the within-mentioned mailing occurred, and not a party to the subject cause; my business address is 110 West A Street, San Diego, California 92101.

I served the within JOINT APPENDIX : an original and 39 copies on the United States Supreme Court as follows: Alexander L. Stevas, Clerk, United States Supreme Court, Washington, D.C. 20543, of which a true and correct copy of the document filed in the cause is affixed, by placing three copies thereof in a separate envelope for each addressee named hereafter, addressed to each such addressee respectively as follows:

Michael J. McCabe
108 Ivy Street
San Diego, CA 92101

County Clerk, San Diego County
Post Office Box 128
San Diego, CA 92112
TO BE DELIVERED TO
JUDGE ELI H. LEVENSON

Quin Denvir
State Public Defender
1390 Market St., Ste 425
San Francisco, CA 94102
Attn: Charles Sevilla

California Supreme Court
350 McAllister St., Rm. 4050
San Francisco, CA 94102

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New York, New York 10012

U.S. District Court
Southern District
U.S. Courthouse
940 Front Street
San Diego, CA 92189
TO BE DELIVERED TO
JUDGE ENRIGHT

Edwin L. Miller
District Attorney
San Diego County
Post Office Box X-1011
San Diego, CA 92112

U.S. Court of Appeals
Ninth Circuit
7th and Mission Streets
P.O. Box 547
San Francisco, CA 94101

Each envelope was then sealed and with the postage prepaid deposited in the United States Mail by me at San Diego, California, on the 19 day of May 1983.

There is a delivery service by United States Mail at each place so addressed or regular communication by United States Mail between the place of mailing and each place so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Dated at San Diego, California, May 19, 1983.

Clifford E. Reed, Jr.
CLIFFORD E. REED, JR.

Subscribed and sworn to before me
this 19 day of May 1983.

